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SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

JOE EUGENE SKIPPER.

Petitioner,

vs. CASE NO. 79-5499

BENNETT H. BRUMMER, et al.,

Respondent.

ORIGINAL COPY

Resp's Brief in opp.

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF FACTS AND CASE

The Petitioner filed a civil rights complaint based upon his claim that he had been represented at his criminal trial by a legal intern working under the supervision of the public defender. Such representation by legal interns not yet admitted to the Florida Bar is authorized by the Florida Supreme Court, through Integration Rules of the Florida Bar, Article 18. (Appendix.)

The trial court dismissed Petitioner's complaint on the grounds that it was frivolous and failed to state a cause of action under 42 USC §1983, because public defenders are absolutely immune from suit.

The Circuit Court affirmed the lower court's finding that the complaint failed to state a legal cause of action. However, the appellate court stated the wrong standard of law had been applied to reach the correct conclusion: public defenders are not absolutely immune from suit as state judicial officers; rather, their actions are entirely outside the realm of state action.

ARGUMENT

Petitioner lacks standing to raise the issue asserted in his petition for certiorari.

Petitioner attempts to have this court grant review because of an alleged conflict between the decision of the Fifth Circuit Court of Appeals in this case and the decision of the Seventh Circuit Court of Appeals in Robinson v. Bergstrom, 579 F.2d 401 (7th Cir. 1978).

Regardless of which standard is applied in this case the result would be the same: Petitioner's complaint would properly be dismissed for failure to state a claim upon which relief could be granted. Therefore, Petitioner lacks standing to object to reasoning of the circuit court. Petitioner does not attempt to assert the application of an entirely different legal principle upon which his legal claim properly could be based. A resolution of this apparent conflict is not yet ripe, since it would have no effect on the outcome of this case.

CONCLUSION

The Court should not accept review of this case to resolve an apparent conflict between the decisions of two different circuit courts, since under either theory Plaintiff's complaint would be dismissed.

Respectfully submitted,

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A P P E N D I X

guilty of the misappropriation remains a member in good standing of The Florida Bar. All payments from said fund may be made or withheld or made in such amounts as the Board, in its discretion, may direct.

The Florida Bar or its Board of Governors may take assignments of the causes of action of claimants as a condition to said payments. Recoveries or repayments to the Board on account of payments from said fund will be restored to the fund.

2. The Board of Governors may allocate from the annual dues of the members of The Florida Bar not more than $15.00 per member per annum to a Clients' Security Fund.

3. This article shall become effective instanter and shall govern all claims now pending or hereafter filed with the Board of Governors.

Added May 18, 1966 (186 So.2d 781), amended July 1, 1970 (237 So.2d 150); May 12, 1978 (358 So.2d 1363).

Article XVIII. Law School Civil and Criminal Practice Program

I. Purpose.
II. Activities.
III. Requirements and Limitations.
IV. Certification.
V. Other Activities.
VI. Supervision.
VII. Miscellaneous.
VIII. Continuation of Practice Program After Completion of the Law School Program or Graduation.

I. Purpose

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted:

II. Activities

A. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance. In such cases the supervising attorney shall be personally present

when required by the trial judge who shall determine the extent of the eligible law student's participation in the proceeding.

B. An eligible law student may also appear in any criminal matter on behalf of the state with the written approval of the prosecuting attorney or his authorized representative and of the supervising lawyer. In such cases the supervising attorney shall be personally present when required by the trial judge who shall determine the extent of the law student's participation in the proceeding.

C. An eligible law student may also appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies, with the written approval of the attorney representing the state, state officer, or state agency. The attorney representing the state, state officer, or state agency shall supervise the law student and shall be personally present when required by the court or administrative tribunal, which shall determine the extent of the law student's participation in the proceeding.

D. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

E. The Board of Governors shall fix the standards by which indigency is determined under this rule upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.

III. Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

A. Be duly enrolled in the United States in a law school approved by the American Bar Association.

B. Have completed legal studies amounting to at least four semesters, or six quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis.

C. Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

D. Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.

E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student (nor shall it prevent any agency from making such charges for its services as it may otherwise properly require).

F. Certify in writing that he has read and is familiar with the Code of Professional Responsibility as adopted by this court and will abide by the provisions thereof.

IV. Certification

The certification of a student by the law school dean:

A. Shall be filed with the clerk of this court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of 18 months after it is filed.

B. May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of this court. It is not necessary that the notice state the cause for withdrawal.

C. May be terminated by this court at any time without notice or hearing and without any showing of cause. Notice of the termination may be filed with the clerk of the court.

V. Other Activities

A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the Bar of this court, but outside the personal presence of that lawyer, including:

1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

2. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer.

3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be signed by the attorney of record.

4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

B. An eligible law student may participate in oral argument in appellate courts, but only in the presence of the supervising lawyer.

VI. Supervision

The member of the Bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

A. Be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

VII. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to the practice of law to do anything that he might lawfully do prior to the adoption of this rule.

VIII. Continuation of Practice Program After Completion of the Law School Program or Graduation

A. A law student who has completed the law school practice program and (1) has had certification withdrawn by the law school dean by reason of completion of the program or (2) has graduated from law school following successful completion of the program, may appear in Court pursuant to this rule if the attorney general, a state attorney, a public defender or a supervising attorney of a legal aid organization approved by the Supreme Court:

1. Files a certification in the same manner and subject to the same limitations as that required to be filed by the law school dean. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of his certification. The maximum term of certification for graduates shall be twelve (12) months from graduation.

2. Further certifies that he will assume the duties and responsibilities of the supervising attorney as provided by other provisions of this rule.

B. A legal aid organization seeking approval from the Supreme Court for the purposes of this Article shall file a petition with the clerk of the Court certifying that it is a nonprofit organization and reciting with specificity:

1. The structure of the organization and whether it accepts funds from its clients;

2. The major sources of funds used by the organization;

3. The criteria used to determine potential clients' eligibility for legal services performed by the organization;

4. The types of legal and non-legal services performed by the organization; and

5. The names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization.

Legal aid organizations approved on the effective date of this order need not reapply for approval, but all such organizations are under a continuing duty to notify the Court promptly of any significant modification to its structure or source of funds.

Added effective Dec. 4, 1970 (241 So.2d 691), amended and effective Jan. 22, 1974 (288 So.2d 222); amended April 30, 1975 (317 So.2d 65); July 11, 1975 (315 So.2d 172); amended April 7, 1976 (330 So.2d 458); amended Nov. 18, 1976 (339 So.2d 646).

Article XVIII, adopted Jan. 17, 1968 (206 So.2d 3), authorizing law students to participate in a law school sponsored trial practice program, was stricken by the Supreme Court on Dec. 4, 1970 (241 So.2d 691).

Article XIX. Group Legal Services

1. No member of The Florida Bar shall furnish or provide legal services under any arrangement with an organization which shall recommend, furnish, or pay for legal services pursuant to Disciplinary Rule 2-103(D) (5) of the Code of Professional Responsibility unless such organization shall have first applied to and secured approval of such arrangement from the Board of Governors of The Florida Bar; provided, however, that any such organization recommending, furnishing, or paying for such services as of the effective date of this article shall have six months from such date within which to apply to and secure approval of the Board of Governors for the continuance of such service.

2. Every application for approval hereunder shall affirmatively demonstrate compliance with each requirement of Disciplinary Rule 2-103(D) (5), and shall further affirmatively demonstrate compliance by each lawyer performing or to perform legal services with By-Laws of the Board of Governors of The Florida Bar and with the following conditions:

(a) Any person eligible to receive legal services under the arrangement may obtain legal services independently of the arrangement from any attorney of his choice;

(b) No unlicensed person will provide legal services under the arrangement;

(c) Neither the organization nor any member thereof shall interfere or attempt to interfere with the lawyer's independent exercise of his professional judgment;

(d) The person to whom the legal services are rendered, and not the organization, is the client of the lawyer;

(e) In providing legal services, the lawyer must comply with the Code of Professional Responsibility, including without limitation those provisions relating to the setting, charging, and collecting of fees, and relating to advertising;

(f) Any publicity disseminated by the organization to its members will not describe the lawyer beyond giving his name, address and telephone number, and such other information as may be required to facilitate the access of a member to the services of the lawyer;

(g) Any publicity disseminated by the organization to nonmembers will not identify the lawyer by name;

(h) No organization shall advertise or otherwise make representations to the public or its members regarding the cost of legal services which may be provided by attorneys serving members of the organization. The cost of legal services depends upon varying conditions and circumstances which preclude determination of the fee to be charged for a required service prior to the time the attorney is retained;

(i) The authority of the organization under this Article will be terminated in the event of any substantial violation of the provisions of the Code of Professional Responsibility or the Integration Rule or the by-laws promulgated thereunder.

(j) Any publicity that is going to be disseminated by the organization must first be approved by The Florida Bar.

3. A lawyer shall not furnish legal services in connection with any arrangement approved hereunder if he participated in